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A CORRECTION.

Owing to an error a clause was omitted in the note appended to Mr. Morse's article on "The Civil and Political Status of the Inhabitants of Ceded Territories" which appeared in the December number of the HARVARD LAW REVIEW. The sentence beginning on line 15 of the note embodying Mr. Kennedy's comment on Mr. Morse's article (p. 272) should read as follows: "They had over 7000 Spanish prisoners whom they had captured with the towns and forts on the coast as well as in the interior," etc.

PROOF OF CONTINGENT CLAIMS IN BANKRUPTCY. — A late referee's decision draws attention to a noticeable omission in the United States Bankruptcy Law of 1898. The bankrupts had guaranteed the payment of certain notes at their maturity, which did not occur until a short time after the beginning of the bankruptcy proceedings. The holder of the notes sought to prove against the estate, but the claim was dismissed on the ground that the bankrupts had been under no "fixed liability absolutely owing at the time of the filing of the petition," within section 63 a (1) of the present act. *In the matter of J. R. McCauley & Sons*, 2 N. B. N. Rep. 1085. The result reached was necessary, as the present law fails to provide in any way for the proof of contingent debts, except in the case of a surety of the bankrupt proving in the creditor's name (sec. 57 i.).

This exclusion of contingent claims from proof is a return to the rule of the older English and American statutes, which provided only for liquidated debts absolutely owing at the time of the bankruptcy. However,

with the development of ideas as to the proper scope of bankruptcy proceedings, this narrow rule was changed in both countries. In England, the statute of 6 Geo. IV. c. 16, s. 56, first provided for the proof of contingent debts. This act was interpreted as including the debts of a bankrupt guarantor. *Ex parte Myers*, M. & Bl. 229. In all subsequent English statutes there has been a provision for contingent debts and liabilities, and the manifest purpose of the present act (46 & 47 Vict. c. 52, s. 37) is to free the debtor from every possible liability, however contingent. The only restriction is the provision that the court may exclude a liability from proof when its value is incapable of being fairly estimated. In the United States the first provision for the proof of contingent liabilities appeared in section 5 of the Act of 1841 (5 Stats. 444), and this was followed by even broader provisions in the Act of 1867, sect. 19 (R. S. §§ 5068, 5069). Both of these statutes allowed the proof of contingent liabilities on their becoming absolute, and provided for the ascertainment of the present value of contingent claims, and for their proof at such valuation. These acts, in spite of their seemingly all-comprehensive provisions, were differently interpreted in various jurisdictions. Some courts limited the Act of 1841 to existing demands upon which the cause of action depended on a contingency, excluding demands whose existence depended on a contingency. *French* v. *Morse*, 68 Mass. 111. Others held under both acts that when it was impossible to liquidate the claim properly, it should not be allowed. *Ryppin* v. *Maguire*, 15 Wall. 549; *Eastman* v. *Hibbard*, 54 N. H. 504. While still others were of the opinion that the broad words of the enactments must be construed as discharging the bankrupt from every possible liability, no matter how difficult it might be to ascertain the true value of the claim. *Tobias* v. *Rogers*, 13 N. Y. 59; *Reitz* v. *People*, 72 Ill. 435. It would seem that this last view was correct in its interpretation of the statutes, and desirable in its effect. Moreover, most of the cases which refused to allow proof of contingent liabilities because of the impossibility of liquidation dealt with claims against sureties on bonds for the proper performance of duties, or other instances where the chance of breach is infinitesimal. This is very different from the case of the guarantor of a note, where the liability must become absolute, if at all, at a known and fixed date. In fact, there seems little doubt that under these acts the claim in the principal case would have been allowed, especially since the liability of the bankrupt could have been absolutely ascertained within a very short time after the beginning of the proceedings.

The Act of 1898, in failing to protect bankrupts against any contingent claims, however soon after the filing of the petition the contingency may happen, seems a distinct retrogression from the trend of opinion as expressed in the more modern acts. The omission, whether intentional or a mistake, is much to be deplored. Bankruptcy proceedings should clear a man from all possible debts and liabilities, giving him a chance to start absolutely afresh. And the desirability of this result should outweigh the difficulty of liquidating the claim, even where it is doubtful whether or not there ever will be a liability, and though its value may depend on the chances of another man's solvency.